IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5960 of 1996

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M. DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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BAPALBA, WIDOW OF MANUBHA - Petitioner(s)
Versus
ANNKUNVARBA WD. OF RAMSANGJI HOTHI & 4 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for MR SURESH M SHAH for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
None for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 5,
GOVERNMENT PLEADER for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
19th December, 2007

ORAL JUDGMENT

This petition preferred under *Article* 226 of the Constitution of India arises from the order dated 23rd June, 1996 made by the State Government [Deputy

Secretary-Appeals, Revenue Department] in Revision Application No. Kachchh-32 of 1993.

It appears that by Order dated 31st May, 1991 made by the Mamlatdar, Bhuj, the respondent no.1-Ramsangji Meramanji was allotted a piece of land admeasuring 2 gunthas out of the land Survey No. 429 of village Motabandhra for construction of a well for irrigation of his adjoining land. Feeling aggrieved, one Manubha Nathuji Hothi, the predecessor of the petitioners preferred Appeal No. 11 of 1994 before the Deputy Collector. That appeal was allowed by the Deputy Collector by Order dated 22nd June, 1994. The opponent-Ramsangji was refrained from irrigating his lands from a common canal and the Mamlatdar was instructed to follow the Government instructions contained in letter dated 9th September, 1968. Feeling aggrieved, the said Ramsangji preferred Appeal No. 73 of 1994 before the District Collector, Kachchh. The District Collector, Kachchh by his order dated 29th September, 1995 *set aside* the Order dated 22nd June, 1994. He issued instruction to observe the norms of maintaining the distance of 200 meters between the two wells and directed to initiate proceedings for

removal of unauthorized wells.

The petitioners are the heirs and legal representatives of the aforesaid Manubha Natthuji Hothi of village Motabandhra, Taluka-Bhuj, District-Kachchh. The said Manubha Hothi also had, on 17th July, 1991, applied for grant of land admeasuring 2 gunthas of Government land, Survey No. 429 of village Motabandhra for construction of a well for irrigation of his adjoining land. At first such permission was refused by the Mamlatdar, Bhuj. However, that order was set-aside in appeal by order dated 13th January, 1993 made by the Deputy Collector. Pursuant to the said order, by order dated 27th January, 1993 made by the Mamlatdar, a piece of land admeasuring 2 gunthas out of the said Survey No. 429 was granted to the said Munubha Hothi for construction of a well and channels on the terms and conditions mentioned in the order. In appeal preferred by the respondent no.1, the said order was confirmed by the District Collector, Bhuj, by his order dated 6th July, 1993. The challenge by respondent no.1 was mainly on the ground that the well constructed by the said Manubha was within the range of 200 meters of his existing

well on the said land Survey No. 429. The District Collector observed that in the panchnama preferred at the relevant time, there was no mention of any existing well. Apparently, the well constructed by the respondent no.1 was without the permission and was illegal. The District Collector, therefore, directed an inquiry to be made in respect of the unauthorized well constructed by the respondent no.1. Feeling aggrieved, the respondent no.1 preferred Revision Application before the State Government. The State Government, by *impugned* order dated 16th July, 1996, observed that according to the norms set by the Department of Geology & Groundwater, there should be *atleast* a distance of 660' between two wells. In the instant case, the said distance had not been maintained. The order of the District Collector was, therefore, *set-aside*. However, the State Government refused to interfere with the direction to conduct inquiry in respect of the well illegally constructed by the respondent no.1.

Though served, the respondent no.1 has not entered appearance. In absence of contest by the respondent no.1 and in view of passage of time, i.e.,

the disputed well is in existence for nearly 15 years, the *writ* petition is allowed. The *impugned* order dated 23rd June, 1996 made by the State Government in Revision Application No. Kachchh-32 of 1993 is *quashed* and *set-aside*. The order dated 6th July, 1993 made by the District Collector, Kachchh in Appeal No. 26 of 1993 is restored. Rule is made absolute. The parties will bear their own cost.

{Ms. R.M Doshit, J.}

*Prakash**